

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

JERLARD DEREK REMBERT,  
Plaintiff,

v.

Case No: 8:20-cv-1577-T-33AAS

STATE OF FLORIDA,  
Defendant.

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**ORDER**

This matter comes before the Court upon consideration of United States Magistrate Judge Amanda Arnold Sansone's Report and Recommendation (Doc. # 43), entered on January 6, 2021, recommending that Plaintiff Jerlard Derek Rembert's application to proceed in forma pauperis (Doc. # 39) be denied. As of the date of this Order, no objections have been filed and the time for filing objections has lapsed. The Court accepts and adopts the Report and Recommendation and denies the application to proceed in forma pauperis.

**I. Background**

Rembert initiated this action pro se against the State of Florida on July 10, 2020, claiming that "the State of Florida violated his 8th and 14th Amendment rights by convicting him while incompetent." (Doc. # 1 at 3).

Pursuant to Federal Rule of Civil Procedure 4(m) Rembert had until October 8, 2020, to perfect service. Fed. R. Civ. P. 4(m). The Court extended this deadline twice (Doc. ## 18, 26), warning Rembert that "if a satisfactory return of service is not filed with this Court by November 30, 2020, this case will be dismissed." (Doc. # 26). The Court also entered three detailed orders – on October 14, 2020, (Doc. # 18), October 16, 2020, (Doc. # 21), and November 15, 2020, (Doc. # 26) – informing Rembert why his previous attempts at service were deficient and explaining the proper way to effectuate service on the State of Florida.

Despite these orders, Rembert failed to file proof of service by the deadline of November 30, 2020. The Court accordingly dismissed the case without prejudice on December 1, 2020, for failure to timely serve the State of Florida. (Doc. # 37).

Rembert filed a notice of appeal on December 3, 2020, appealing the Court's order dismissing his case without prejudice. (Doc. # 38). Subsequently, Rembert filed an application to proceed in forma pauperis. (Doc. # 39).

Judge Sansone entered her Report and Recommendation (Doc. # 43), on January 6, 2021, recommending that the application be denied on the grounds that it "fail[s] to

establish the existence of a reasoned, nonfrivolous argument raised on appeal.” (Id. at 2).

Judge Sansone also advised Rembert that he had fourteen days to file written objections to the Report and Recommendation. (Id. at 3). Rembert did not file any objection by the deadline. Although Rembert filed a notice of appeal on January 14, 2021, appealing the “January 6th, 2021 court order denying in [f]orma pauperis status” (Doc. # 44), this notice cannot be reasonably construed as an objection because it contains no specific arguments explaining Rembert’s opposition to the report. The time to file an objection has now lapsed.

## **II. Discussion**

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge’s Report and Recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge

reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. S. Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).


After conducting a careful and complete review of the findings, conclusions and recommendations, and giving *de novo* review to matters of law, the Court accepts the factual findings and legal conclusions of the Magistrate Judge and the recommendation of the Magistrate Judge.

Accordingly, it is now

**ORDERED, ADJUDGED, and DECREED:**

- (1) The Report and Recommendation (Doc. # 43) is **ACCEPTED** and **ADOPTED**.
- (2) Plaintiff Jerlard Derek Rembert's application to proceed in forma pauperis (Doc. # 39) is **DENIED**.
- (3) The Court certifies that the appeal is not taken in good faith and directs the Clerk to notify the Court of Appeals of this ruling in accordance with Rule 24(a)(4)(B), Federal Rules of Appellate Procedure.

**DONE** and **ORDERED** in Chambers in Tampa, Florida, this  
27th day of January, 2021.

  
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VIRGINIA M. HERNANDEZ COVINGTON  
UNITED STATES DISTRICT JUDGE